

FILED

2007 SEP 25 AM 9:10

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY do DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FAUSTINO ROBINSON

Plaintiff,

v.

JOHN BROHOS,

Defendant.

CASE NO: 07-CV-0875 W (NLS)

**ORDER (1) GRANTING MOTION  
TO PROCEED IN FORMA  
PAUPERIS [DOC. NO. 2]  
(2) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
[DOC. NO. 3] AND  
(3) DISMISSING COMPLAINT  
WITHOUT PREJUDICE**

Pending before the Court are Plaintiff Faustino Robinson's motions to proceed in forma pauperis ("IFP"), and for appointment of counsel. For the reasons outlined below, the Court **GRANTS** the motion to proceed IFP, and **DENIES** the motion for appointment of counsel. Additionally, the Court **DISMISSES WITHOUT PREJUDICE** the Complaint for failure to state a claim.

**I. Motion to Proceed IFP.**

All parties instituting a federal district court civil action, suit or proceeding must pay a filing fee. 28 U.S.C. § 1914(a). A plaintiff, however, may be relieved of the filing-fee obligation if granted leave to proceed IFP under 28 U.S.C. § 1915(a).

1       The determination of whether a plaintiff is indigent, and thus unable to pay  
 2 the filing fee falls within the district court's discretion. California Men's Colony v.  
 3 Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506 U.S. 194  
 4 (1993) ("Section 1915 typically requires the reviewing court to exercise its sound  
 5 discretion in determining whether the affiant has satisfied the statute's requirement  
 6 of indigency."). It is well-settled that a party need not be completely destitute to  
 7 proceed IFP. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40  
 8 (1948). To satisfy the requirements of 28 U.S.C. § 1915(a), "an affidavit [of  
 9 poverty] is sufficient which states that one cannot because of his poverty pay or give  
 10 security for costs . . . and still be able to provide himself and dependents with the  
 11 necessities of life." Id. at 339. At the same time, however, "the same even-handed  
 12 care must be employed to assure that federal funds are not squandered to  
 13 underwrite, at public expense, . . . the remonstrances of a suitor who is financially  
 14 able, in whole or in material part, to pull his own oar." Temple v. Ellerthorpe, 586  
 15 F.Supp. 848, 850 (D.R.I. 1984).

16       Having read and considered the papers submitted, the Court finds that  
 17 Plaintiff has demonstrated that he is unable to pay the fees or post securities  
 18 required to maintain this action. According to his declaration, Plaintiff does not  
 19 have a sufficient income to support himself, and thus receives support from San  
 20 Diego REACH, which provides services to homeless and mentally ill adults in San  
 21 Diego. Accordingly, Plaintiff's motion to proceed IFP is **GRANTED**.

## 22

### 23 **II. Motion for Appointment of Counsel.**

24       There is generally no constitutional right to counsel in a civil case. United  
 25 States v. 30.64 Acres of Land, 795 F.2d 796, 801 (9th Cir. 1986). However, courts  
 26 have discretion to request volunteer counsel for indigent plaintiffs under exceptional  
 27 circumstances. 28 U.S.C. § 1915(e); Wood v. Housewright, 900 F.2d 1332, 1335  
 28 (9th Cir. 1990). While courts may request volunteer counsel in exceptional cases, it

1 has no power to make a mandatory appointment. Mallard v. United States District  
 2 Court for Southern District, 490 U.S. 296, 301-308 (1989).

3 To determine whether exceptional circumstances exist, courts evaluate the  
 4 plaintiff's likelihood of success on the merits and the ability of the plaintiff to  
 5 articulate his claim *pro se* in light of the complexity of the legal issues. Richards v.  
 6 Harper, 864 F.2d 85, 87 (9th Cir. 1988); Weygandt v. Look, 718 F.2d 952, 954 (9th  
 7 Cir. 1983). However, neither of these factors is dispositive and both must be viewed  
 8 together before reaching a decision on request of counsel under [former] section  
 9 1915(d)." Willborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Terrell v.  
 10 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).

11 Here, the likelihood of success appears to be minimal. As discussed below,  
 12 Plaintiff does not appear to state a cognizable claim in his Complaint, so it is highly  
 13 doubtful that he will receive the relief he seeks. Because Plaintiff has failed to state  
 14 a cognizable claim, the Court cannot conclude that the issues in the litigation are  
 15 sufficiently complex to justify appointment of counsel. Accordingly, the Court  
 16 **DENIES** Plaintiff's motion for appointment of counsel.

### 17 18 **III. Review of the Complaint.**

19 When a complaint is written by a *pro se* litigant, as here, pleading rules are  
 20 relaxed and the complaint is held to a less stringent standard. Karim-Panahi v. Los  
 21 Angeles Police Dep't., 839 F.2d 621, 623 (9th Cir. 1988); Eldridge v. Block, 832  
 22 F.2d 1132, 1136 (9th Cir. 1987). It is equally settled, however, that "[a] trial court  
 23 may act on its own initiative to note the inadequacy of a complaint and dismiss it for  
 24 failure to state a claim." Wong v. Bell, 642 F.2d 359, 361 (9th Cir. 1981); Sparling  
 25 v. Hoffman Const. Co., Inc., 864 F.2d 635, 638 (9th Cir. 1988); Barsella v. United  
 26 States, 135 F.R.D. 64, 66 (S.D.N.Y. 1991) (policy requiring courts to liberally  
 27 construe *pro se* complaints "does not mandate that a court sustain every *pro se*  
 28 complaint even if it is incoherent, rambling, and unreadable").

1 In addition, Rule 8 of the Federal Rules of Civil Procedure requires a  
 2 complaint to set forth "a short and plain statement of the claim showing that  
 3 [Plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rule also requires that  
 4 each claim be "simple, concise, and direct." Fed. R. Civ. P. 8(e)(2). These rules  
 5 ensure that a complaint gives fair notice to defendants and states the elements of the  
 6 claim plainly and succinctly. Jones v. Community Redevelopment Agency of City of  
 7 Los Angeles, 733 F.2d 646, 649 (9th Cir. 1984). Where a complaint contains  
 8 nothing more than conclusory allegations, unsupported by facts, it fails to comply  
 9 with Rule 8. Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977).

10 The Court finds that the Complaint fails to state a claim upon which relief  
 11 can be granted and also fails to provide adequate notice to Defendant under Rule 8.  
 12 Plaintiff alleges that "on a court day I won the case and they were going to pay me  
 13 social security and give me the medical card, but the judge named John Brahós from  
 14 Immigration denies for me to get social security." (Compl., p.2.) While not entirely  
 15 clear, it appears that Plaintiff is asserting that alleged Immigration Judge Brahós  
 16 found (presumably during an immigration proceeding) that Plaintiff is in the country  
 17 illegally. This, in turn, apparently resulted in the denial of Plaintiff's request for  
 18 social security benefits and a medical card. Assuming the truth of all the allegations,  
 19 the Court concludes that Plaintiff has failed to state a claim upon which relief can be  
 20 granted. FED. R. CIV. P. 12(b)(6).

21 Aside from failing to state the elements of any legal claim, the Complaint  
 22 provides little notice about what Defendant is alleged to have done wrong, or the  
 23 reasons Plaintiff is entitled to the \$10 million in damages sought. The Court,  
 24 therefore, also finds that dismissal is warranted for failure to comply with Rule 8 of  
 25 the Federal Rules of Civil Procedure. FED. R. CIV. P. 8; see also McHenry v. Renne,  
 26 84 F.3d 1172, 1177-80 (9th Cir. 1996) (rule requiring each averment of a pleading  
 27 to be simple and concise applies to all claims and may be basis for dismissal  
 28 independent of whether pleadings are subject to dismissal for failure to state a

1 claim); Barsella v. United States, 135 F.R.D. 64, 66 (S.D.N.Y. 1991) (policy  
2 requiring courts to liberally construe pro se complaints "does not mandate that a  
3 court sustain every pro se complaint even if it is incoherent, rambling, and  
4 unreadable.").


5  
6 **IV. Conclusion.**

7 In light of the foregoing, the Court **GRANTS** Plaintiff's motion for leave to  
8 proceed IFP [Doc. No. 2], and **DENIES** the motion for appointment of counsel  
9 [Doc. No. 3]. Additionally, the Court **DISMISSES** this action without prejudice  
10 and with leave to amend. Should Plaintiff wish to resume this litigation, Plaintiff  
11 must file and serve a First Amended Complaint no later than October 22, 2007.

12 Plaintiff is specifically advised that his amended pleading must detail who did  
13 what to whom, when and where such conduct occurred and how such conduct  
14 allegedly violates federal or state law. Conclusory allegations unsupported by  
15 specific allegations of fact are insufficient to properly comply with the Federal Rules  
16 of Civil Procedure. Any failure to properly comply with the Court's instructions  
17 herein may result in the termination of this case with prejudice and without further  
18 leave to amend.

19  
20 **IT IS SO ORDERED.**

21  
22 **DATE: September 20, 2007**

23   
24 **HON. THOMAS J. WHELAN**  
25 United States District Court  
26 Southern District of California  
27  
28